

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR

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April 20, 2005

The Honorable Alan Lowenthal, Chair
California State Senate
Senate Committee on Environmental Quality
State Capitol, Room 3048
Sacramento, CA 95814

Dear Senator Lowenthal:

Thank you for your letter of April 12, 2005, in which you expressed concerns about the process to consider the statewide use of Chlorinated Polyvinyl Chloride (CPVC) pipe in residential structures. Please be assured that the Department of Housing and Community Development (Department) is fully committed to compliance with both the spirit and letter of the California Environmental Quality Act (CEQA). In fact, consistent with this commitment, the Department is currently conducting a public comment period over and above the usual requirements called for in the CEQA guidelines. This comment period ends on April 25, 2005.

Please allow me to provide some background history of CPVC and the Department's compliance with CEQA.

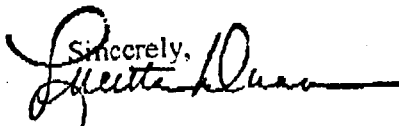
The regulations now in effect authorize the use of CPVC where a local building official determines that there is, or will be, a premature failure of metallic pipe. These current regulations resulted from the Department's compliance with the California Superior Court's order in the 1997 case of Richard Cuffe v. California Building Standards Commission. In that case, the court prohibited the use of CPVC without compliance with CEQA--a process that commences with an initial study and results in the preparation of either an environmental impact report (EIR) or a negative declaration that an EIR is not necessary. Immediately after that case, the Department voluntarily elected to perform a full EIR. That EIR was completed and concluded that no significant adverse effects would result from the approval of CPVC. However, once again, the EIR was challenged through litigation by parties who have consistently opposed the use of any non-metal alternative plumbing material. This case was settled through the preparation of an initial study, as ordered by the court and required by CEQA, and the completion of a mitigated negative declaration, also consistent with the court's order and also in full compliance with CEQA. The mitigation measures enumerated in the negative declaration were, and are, those measures which ensure the health and safety of the installers and consumers from all identified and known potential hazards.

The current proposal would, as you have noted, have the potential effect of expanding the use of CPVC on a statewide basis by removing the requirement for a local finding of premature pipe failures, but none of the mitigation measures are being deleted. All of the existing mitigation measures required, which ensure the safety of both the installers and the consumers, remain fully in place. Therefore, all health, safety, and environmental concerns have been fully mitigated and will continue to be mitigated. There is no proposal to reduce or eliminate any mitigation measure.

An addendum to an existing CEQA document—in this case, the mitigated negative declaration—is permitted by the CEQA guidelines and is fully consistent with the requirements of CEQA. The process being followed by the Department not only meets all CEQA requirements, but exceeds the guidelines by providing a comment period of the Department's 70-page draft analysis, a process not called for by CEQA or the implementing guidelines. The Department has specifically invited those who contend that there are issues that have not been considered to provide that information for the Department's consideration. To ensure that the public is fully informed, the Department has posted the draft addendum on its web site and directly mailed complete copies to those parties who have traditionally been interested in the issue of alternative plumbing materials, including the known opponents. To argue that the public has not been adequately informed, or has not been provided an opportunity to participate as envisioned by CEQA, is inconsistent with the facts.

Frankly, considering the 30-year history of plastic pipe in California, there can be no doubt that any process followed will be challenged as not being in good faith or consistent with CEQA. However, plastic pipe is, and continues to be, a cost efficient product currently available to consumers in all 49 other states, but denied to Californians. In the absence of health or safety concerns that are not already mitigated, it is simply unfair to California consumers to deny an alternative plumbing material regularly used virtually everywhere else without documented adverse health, safety or environmental effects. Too long has plastic pipe been a political issue, rather than a building standards issue. The courts, as you noted, have ruled that CEQA compliance is a pre-requisite to the approval of certain building standards and the Department is complying and will comply with this legal interpretation. Consistent with these court rulings, we strongly assert that the CEQA process should be followed both by the Department and by those who urge compliance with CEQA. Consistent with the court's rulings, those who have concerns about the use of CPVC should respond within the CEQA process.

I am available to meet with you to discuss any continuing concerns and look forward to working with you to dispel the misinformation you may have received. If you have any questions, please call me at (916) 445-4775.

Sincerely,


Lucetta Dunn
Director

The Honorable Alan Lowenthal
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cc: Sunne Wright McPeak, Secretary
Business, Transportation and Housing

The Honorable Sheila Kuehl, Chair
Senate Committee on Natural Resources and Water

The Honorable Gene Mullin, Chair
Assembly Committee on Housing and Community Development

The Honorable Fran Pavley, Chair
Assembly Select Committee on Air and Water Quality

The Honorable Ira Ruskin, Chair
Assembly Committee on Environmental Safety and Toxic Materials

The Honorable Loni Hancock, Chair
Assembly Committee on Natural Resources

Richard Costigan, Legislative Secretary
Governor's Office